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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GREGORY C. BONTEMPS,  
Inmate No. H-71515,

Plaintiff,

vs.

S. HERRARA; DE LA CRUZ;  
INS INSPECTOR VALDEZ; B. L.  
PAUL,

Defendants.

Civil No. 14cv1498 WQH (RBB)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO  
PROCEED *IN FORMA PAUPERIS*  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Plaintiff, currently housed at the California State Prison - Los Angeles County, initially filed a civil action pursuant to 42 U.S.C. § 1983 in the Eastern District of California. On April 30, 2014, United States Magistrate Judge Dale A. Drozd determined that the claims arose while Plaintiff was housed in Calipatria State Prison and transferred the matter to the Southern District of California.

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**I. Failure to Pay Filing Fee or Request IFP Status**

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a party's failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Plaintiff has not prepaid the \$400 in filing and administrative fees required to commence a civil action, nor has he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Therefore, the case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

**II. Conclusion and Order**

For the reasons set forth above, the Court hereby:

(1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$400 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

(2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; *or* (b) complete and file a Motion to Proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

**IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee

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<sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 or complete and submit the enclosed Motion to Proceed IFP within that time, this action  
2 shall remain dismissed without prejudice and without further Order of the Court.

3 DATED: 7/2/14

  
4 HON. WILLIAM Q. HAYES  
5 United States District Judge  
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